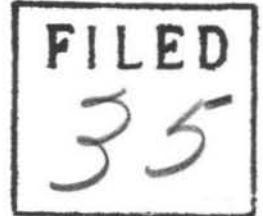


TAXATION AND REVENUE: Collector must advertise and sell realty for all unpaid delinquent taxes due thereon for all years prior and subsequent to the years for which a certificate of sale was issued and which are not barred by the statute of limitations.

September 18, 1942



Hon. Charles S. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Greenwood:

Your request of September 15, 1942, for an opinion relating to the Jones-Munger Law is as follows:

"The County Treasurer of this county is confronted with a situation as follows:

"Certain property in this county was sold for taxes a number of years ago and the County Treasurer permitted the owner to redeem the property upon payment of a part of the back taxes. Some of this back taxes has been paid, but in other cases not. The question is, 'has the Treasurer the right to advertize the property for sale for the taxes that were delinquent at the time of the original sale and not paid to date?'"

The County Collector is the proper officer to sell lands for general delinquent taxes on real estate. (Section 11108 R. S. Mo. 1939).

Section 11125 R. S. Mo. 1939, is in part as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, * * * *" (Underscoring ours).

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Therefore, it becomes the duty of the Collector to submit for sale each November all taxes due and delinquent at such time.

Section 11165 thereof is in part as follows:

"No proceedings for the sale of land and lots for delinquent taxes under the provisions of chapter 74, Revised Statutes of Missouri, 1939, relating to the collection of delinquent and back taxes and providing for foreclosure sale and redemption of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within five (5) years after delinquency of such taxes, and any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said law in so far as the time at which such sales are to be had is specified therein: * * *"

Under the above section no sales may be had for the enforcement of the states lien for such delinquent taxes unless such initial proceedings shall be commenced within five (5) years after such delinquency.

Under Section 11127 thereof providing for a first offering or sale and Section 11129 providing for a second offering or sale, realty may be sold only on condition that the bid is for a sum equal to the delinquent taxes together with interest, penalty and costs.

Thus when a sale is made under such offerings the State and County receive the full amount of taxes due under the lien for the particular years involved and the lien is thereby foreclosed. The above offerings and sales thereunder are evidenced by a certificate of purchase from which the right of redemption exists.

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The third sale - to the highest bidder - was also subject to redemption (Laws 1933 p. 425). However, under the provisions of Section 11130 thereof (Re-enacted Laws of 1939 p. 850, Sec. 9953-a) the right of redemption was withdrawn from such sale. It was, therefore, to be evidenced by the execution and delivery of a deed.

By Section 11131 thereof it was provided that the County can protect itself by bidding in the property, on the third sale.

Section 11145 thereof is in part as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption."

The above statute is explicit in fixing the duties of the Collector with reference to redemption.

In event the certificate holder paid subsequent taxes it became the duty of the Collector to require re-payment as a prerequisite to redemption. If such subsequent taxes were not paid by any person, it became the duty of the Collector to advertise and sell when they became delinquent.

Section 11152 thereof is as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser shall at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the county collector the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase and draw interest at the rate specified in said first certificate but not to exceed ten per cent per annum from the date of payment. Said holder of a certificate of purchase permitting a subsequent certificate to issue on the same property, shall, on notice from the county collector, surrender said certificate of purchase on payment to him of the redemption money paid by the subsequent purchaser."

Therefore, the question of redemption does not control the Collector in collecting taxes. If the owners or other parties in interest, including the certificate holder, fail to pay general delinquent taxes on real estate the Collector should sell for such unpaid delinquent taxes for years prior to those years included in the certificate as well as for subsequent years.

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No priority exists in favor of the certificate holder for taxes accruing after the date of the certificate. Also the same is true as to prior unpaid taxes which are not inferior to the taxes for which the sale was had.

Therefore, the only general taxes foreclosed by the sale are those for which the sale is had. The fact that the collector omitted from the advertisement older general taxes than those included, a sale under such advertisement would not foreclose the lien of the State on such older taxes. Such in effect is the holding in the case of State ex rel. v. Baumann 160 S. W. (2d) 697, 700:

"Even as to taxes becoming delinquent after the effective date of the new law, we think the legislature contemplated that some such taxes might be omitted from a tax sale and, if so, the purchaser must pay them before receiving a deed. Surely the language in Section 11152 requiring the purchaser to pay 'any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed' by the sale, means something. It means that some general taxes, which had become due prior to the issuance of the certificate of sale, might be omitted from the advertisement. We think, the Jones-Munger Act does contemplate that the collector shall include all delinquent taxes in the sale, but we also think if he fails to do so the State's lien is not lost, at least up to the time he delivers his tax deed. The Kansas Supreme Court, under a tax law somewhat similar to our Jones-Munger law, has held that a tax sale for a given year does not preclude the State from later selling for the delinquent taxes of a previous year. Board of Com'rs v. Conners, 121 Kan. 105, 245 P. 1030."

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CONCLUSION

Therefore, it is the opinion of this Department that although lands are sold and redeemed under the Jones-Munger Law such actions do not control the Collector in collecting delinquent taxes on real estate for those years not included in said action. If the owners or other parties in interest, including the certificate holder, fail to pay such delinquent taxes the collector should sell - absent application of said statutes of limitation - for years prior to those included in the certificate of sale as well as for subsequent years.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

SVM/mc